JAN 18 [redacted]

Supreme Court, U.S.
FILED
JAN 18 1985
ALEXANDER L. STEVAS
CLERK

(4)

NO. 84-1027

IN THE SUPREME COURT OF THE UNITED STATES

December Term, 1984

Berman & Sons, Inc., William J. Allen,
Martin S. Berman, and Lila Gross,

Appellants

v.

Lana J. Scofield and A. Larry Berren,
on behalf of themselves and all
those similarly situated,

Appellees

ON APPEAL FROM THE SUPREME JUDICIAL
COURT OF MASSACHUSETTS

APPELLEES' MOTION FOR AWARD OF DAMAGES AND DOUBLE COSTS-FRIVOLITY

Harvey S. Shapiro, Esq.
Greater Boston Legal Services
68 Essex Street
Boston, Mass. 02111
Tel: (617) 357-5757

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MOTION

The appellees, upon their motion to dismiss this appeal herewith filed, move the Court for an award of damages pursuant to Rule 49.2 of the Rules of this Court, if the appellee's motion be granted, upon the ground that it is manifest that the appeal is frivolous. The appellees also request double costs pursuant to Rule 50.7 for the same reason.

ARGUMENT

In support of this request, the appellees note that the appellants ("landlord") were fully cognizant of the fact that both the trial court and the Massachusetts Supreme Judicial Court had decided the present case by construing the contract between the parties, and

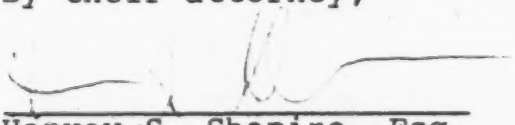
without any requirement of addressing the landlord's claim under the Contract Clause. Jurisdictional Statement, at 9-10. See also, Appendix, at 7-8, 55-56. Notwithstanding the foregoing, the landlord persisted in an appeal to this Court alleging error of constitutional magnitude.

Assuming constitutional error, Rule 16.1(h) of this Court requires that a jurisdictional statement set forth the "reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution." The landlord, in making its argument, cited not a single case of this Court, or of any federal court, construing the Contract Clause of the U.S. Constitution.

The landlord cited no cases whatsoever which were arguably relevant, and did not even attempt to distinguish or apply those cases from this Court which the Appellees had relied on below. There was, in general, no attempt to apply the general propositions of law on which the landlord purports to rely, to the particular facts of this case.

The appellees respectfully submit that the Court should appropriately sanction such conduct.

Lana Scofield, et al.
By their attorney,



Harvey S. Shapiro, Esq.
Greater Boston Legal Services
68 Essex Street
Boston, Mass. 02111
Tel: (617) 357-5757

Dated: January 14, 1985